

October 16, 2006 ALERT:

**IRS again extends deadline for amending
non-qualified deferred compensation plans**

Last month, we sent you an alert concerning non-qualified deferred compensation plan amendments which stated that the deadline for those updates was December 31, 2006.

Recently, the IRS has generally extended that deadline by one year. **The new deadline is December 31, 2007. Almost every organization offering a non-qualified deferred compensation plan must have the required updates to its plan completed by December 31, 2007.** Final regulations governing these changes are scheduled to be issued yet in 2006. Those updates are best handled in consultation with both an attorney and a tax professional familiar with compensation issues.

For your convenience and reference, a copy of the original alert is on the back of this page.

If you would like to discuss your plan, please contact your Allen, Gibbs & Houlik, L.C. professional at (316) 267-7231, so that we may coordinate with your counsel and help make sure you are in compliance by the year's end of 2007.

Note: This information is provided to you as a courtesy. It is not intended to be advice specific to your situation, and should be reviewed and clarified by your tax professional and attorney.

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein (including any attachments unless expressly stated otherwise) is not intended or written to be used for the purposes of: (i) avoiding tax penalties that may be imposed by the IRS, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

AGH endeavors to keep clients informed of changes in the financial and regulatory environment. However, we cannot be sure that all matters will be brought to the attention of all pertinent clients. Under no circumstances will we incur charges and initiate services without a written understanding and authorization from the client.

****Please note—this deadline is outdated and the information placed here is for your reference only. The new deadline is December 31, 2007.****

**September 20, 2006 ALERT:
Dec. 31, 2006 deadline for most non-qualified
deferred compensation plan updates to be complete**

Almost every organization offering a non-qualified deferred compensation plan must have completed required updates to its plan by Dec. 31, 2006. Those updates are best handled in consultation with both an attorney and a tax professional familiar with compensation issues.

IRC Section 409A, tightening restrictions on how non-qualified deferred compensation plans are managed, went into effect Jan. 1, 2005, with organizations required to follow its dictates from that point on, but not required to amend their **written plan** yet. They originally received an extension until Dec. 31, 2005 to amend their written deferred compensation plan (or reduce an unwritten plan to a formal document) to conform with Section 409A, but now, **all plans must be amended by the end of this year.** Those plans NOT in compliance face serious penalties, with the deferred compensation becoming taxable and participants incurring a 20% penalty tax and interest. Penalties are paid by the employee, not the employer.

Exceptions and exclusions to 409A

- Nonqualified deferred compensation plans in place in 2004 before Section 409A went into effect are grandfathered (provisions may continue to govern pre-2005 vested benefits), as long as there are no “material modifications” to the plans after Dec. 31, 2004. Deferrals made after Dec. 31, 2004 or additional plan benefits that vest after that date must conform to the new law and regulations.
- Other exclusions include qualified plans, SEPs and SIMPLEs, and a few other exceptions, such as offshore foreign trusts, and short-term deferrals.
- Section 409A was written to be broadly inclusive; if an exclusion is not specifically provided, the plan must be in compliance.

What plans must amend to be in compliance

Section 409A reduces the amount of control that individuals have over their non-qualified deferred compensation plan, putting many more restrictions on how and when funds may be handled. Changes include new restrictions on elections to defer compensation, funding deferred compensation, and distributions of deferred compensation. Essentially, 409A requires that **decisions about deferred compensation must be made in advance and written into the plan.**

What are the next steps

If you have a deferred compensation plan, you will receive the most benefit by consulting with both a tax professional and an attorney. A tax professional can advise you on the specifics of which plans are included, what the new restrictions are, and how to bring your plan into compliance, and work with your counsel to draft a new plan.

If you would like to discuss your plan, please contact your Allen, Gibbs & Houlik, L.C. tax professional at (316) 267-7231 as soon as possible, so that we may coordinate with your counsel and help make sure you are in compliance by year end.